

STATE OF MICHIGAN
COURT OF APPEALS

CITY OF ROMULUS,

Plaintiff-Appellant,

v

CHARTER COUNTY OF WAYNE and WAYNE
COUNTY AIRPORT AUTHORITY,

Defendants-Appellees.

UNPUBLISHED

March 15, 2012

No. 300844

Wayne Circuit Court

LC No. 10-001234-CK

Before: MURPHY, C.J., and HOEKSTRA and MURRAY, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition in favor of defendants and denying plaintiff's motion for a preliminary injunction. For the reasons stated in this opinion, we affirm.

I. FACTS & PROCEEDINGS

This case arises from an agreement ("the 2009 agreement") between defendants, the Airport Authority and Wayne County. In 2009, Wayne County agreed to sell sewer system capacity to the Airport Authority for disposal of glycol-containing water used for de-icing airplanes. Pursuant to the agreement, the Airport Authority will send runoff wastewater to a Detroit wastewater treatment facility through the Rouge Valley sewage disposal system.

Before the Airport Authority contracted with Wayne County, plaintiff provided all sewage disposal services for the Airport Authority pursuant to a separate agreement between the parties. Plaintiff and Wayne County were parties to two separate contracts, the Rouge Valley contract and the Downriver contract, both governing sewage disposal at the time that Wayne County and the Airport Authority entered into the 2009 agreement. The Rouge Valley contract was executed in 1961, and the Downriver contract was executed in 1962. Relevant to this case, both contracts contain the following language: "It is understood and agreed by the parties hereto that the [Rouge Valley System / Downriver System] is to serve the municipalities and not the individual property owners and users thereof, unless by special agreement between the board and the municipality in which the property is located."

The Airport Authority entered into the 2009 agreement with Wayne County after it pleaded guilty to violations of the federal Clean Water Act for the unauthorized discharge of

wastewater. Pursuant to its guilty plea, the Airport Authority agreed to construct a “force main” to pump glycol-containing water to a Detroit wastewater treatment plant instead of collecting it in a retention pond before release into plaintiff’s sewer system for treatment in a Wyandotte treatment plant. The increased capacity of the Detroit treatment plant would eliminate the need for the retention pond to stabilize flows and help prevent future unlawful discharges. The Airport Authority’s construction of the pump and the eventual discharge through the Rouge Valley sewage disposal system would not occur until after the expiration of the then-existing Rouge Valley contract between plaintiff and Wayne County.

Plaintiff filed a complaint on February 1, 2010, alleging that the 2009 agreement between the Airport Authority and Wayne County was a violation of state statute and a breach of the Rouge Valley contract and the Downriver contract between plaintiff and Wayne County. Plaintiff argued that both MCL 123.739 and the contracts prohibited the sale of sewer capacity by Wayne County to the Airport Authority without plaintiff’s consent because the Airport Authority is an “individual user” of plaintiff’s sewer system.

Defendants filed a motion for summary disposition pursuant to MCR 2.116(C)(8) on July 7, 2010, arguing that the Airport Authority is defined by statute as a municipality rather than as an individual user. On July 27, 2010, plaintiff filed a motion for a preliminary injunction to enjoin the performance of the contract between defendants. Plaintiff also responded to defendants’ motion for summary disposition, arguing primarily that there was no basis in statute or the parties’ past relationship for concluding that the Airport Authority failed to qualify as an individual user of plaintiff’s sewer system.

The trial court held hearings on the parties’ motions on September 27, 2010, and October 14, 2010. The trial court concluded that because MCL 123.731(i) defines a municipality to include an “authority existing under the laws of this state,” the Airport Authority is a municipality under MCL 123.739 and is therefore not an individual user. The trial court granted defendants’ motion for summary disposition based on its conclusion that the Airport Authority was not an individual user.

II. STATUTORY INTERPRETATION

Plaintiff first argues that the trial court erred when it concluded that the Airport Authority is not an “individual user” of plaintiff’s sewer services for purposes of MCL 123.739, permitting it to also purchase sewer services from Wayne County. Accordingly, plaintiff contends that the court erred when it granted defendants’ motion for summary disposition under MCR 2.116(C)(8).

We review a decision to grant a motion for summary disposition de novo. *Hines v Volkswagen of Am, Inc*, 265 Mich App 432, 437; 695 NW2d 84 (2005). In reviewing a motion for summary disposition under MCR 2.116(C)(8), this Court considers the pleadings alone and accepts the factual allegations of the complaint as true. *Kuznar v Raksha Corp*, 481 Mich 169, 176; 750 NW2d 121 (2008). Summary disposition is proper if the plaintiff’s claims are “so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.” *Id.* (quotations omitted). Questions of statutory interpretation are also reviewed de novo. *Hines*, 265 Mich App at 437.

This Court's primary goal when considering statutory language is to give effect to the intent of the Legislature. *Alvan Motor Freight v Dep't of Treasury*, 281 Mich App 35, 39; 761 NW2d 269 (2008). If the statutory language is unambiguous, no judicial construction is required and the plain meaning of the language must be applied. *Id.* Every word or phrase should be ascribed its plain and ordinary meaning. *Id.* at 40; MCL 8.3a. Finally, "it is important to ensure that words in a statute not be ignored, treated as surplusage, or rendered nugatory." *Robertson v DaimlerChrysler Corp*, 465 Mich 732, 748; 641 NW2d 567 (2002).

Plaintiff argues that MCL 123.739 prevents defendants from contracting for sewage disposal services because the Airport Authority is an "individual user" of plaintiff's sewage disposal services. MCL 123.739 is part of 1957 PA 185 ("the act"), and provides in relevant part: "No county shall have the power to furnish water service, sewage disposal service or refuse service to the individual users within any municipality without its consent." "Individual user" is not defined in the act; however, "municipality" is defined as "a county, city, village, township, charter township, district, or authority existing under the laws of this state." MCL 123.731(i). The Airport Authority, as an authority, is accordingly a municipality under the definition provided in the act. The act expressly permits a county and a municipality to "enter into a contract or contracts for the acquisition, improvement, enlargement, or extension of a water supply, a sewage disposal, or a refuse system." MCL 123.742(1). Accordingly, Wayne County and the Airport Authority were expressly permitted to contract for sewage disposal pursuant to the act.

On appeal, plaintiff argues that even if the Airport Authority is a municipality, it is also an individual user, and accordingly, Wayne County cannot contract with it for sewage disposal services pursuant to MCL 123.739, which bars such a contract with an individual user within a municipality without the consent of the municipality. Accordingly, plaintiff argues that Wayne County needed its consent to contract with the Airport Authority.

In enacting MCL 123.739, the Legislature specified that contracting with individual users is prohibited; accordingly, it must not have meant all users. *Robertson*, 465 Mich at 748 (statutory language must not be "treated as surplusage."). Therefore, we must determine which users the Legislature intended to exclude from the set of all possible users when it specified that MCL 123.739 was only applicable to individual users.

We note first that because "municipality" is defined in the act such that it may be an entity that is wholly contained within another municipality, for instance, a township within a county, MCL 123.731, the Legislature must not have intended that only geographically exclusive municipalities may contract with a county for sewage disposal services under MCL 123.742. Further, MCL 123.742 expressly authorizes contracts for sewage disposal between a county and a municipality. If we were to accept plaintiff's interpretation of MCL 123.739, the authorization found in MCL 123.742 would be limited to municipalities that are not currently users of another municipality's sewage disposal, absent consent; however, there is no such limitation found in the text of MCL 123.742. Additionally, because counties are municipalities and are authorized to create and sell capacity in sewage disposal systems, plaintiff's interpretation would run contrary to the purpose of the act, which is to establish a regime whereby counties sell sewage disposal services to municipalities but not individual users. See *Glennon v State Employees' Retirement*

Bd, 259 Mich App 476, 479; 674 NW2d 728 (2003) (“To determine the Legislature’s intent, the entire statutory scheme should be analyzed.”)

Therefore, while the act does not provide an express definition of “individual user,” we can nevertheless conclude that even if a municipality could be considered an individual user, the statutory scheme carves out an exception to the requirements set forth in MCL 123.739 by expressly authorizing contracts for sewage disposal between a county and a municipality in MCL 123.742. To hold otherwise would, at a minimum, undermine the express authorization for counties to contract with municipalities for sewage disposal in MCL 123.742. There is no basis for concluding the Legislature intended to render one statute nearly or completely nugatory by implication in another statute in the same act. *Robertson*, 465 Mich at 748; *Glennon*, 259 Mich App at 479. Accordingly, we conclude that the Airport Authority is a municipality under the plain language of the statute, and as such, Wayne County was authorized to contract with the Airport Authority for sewage disposal services.

III. PLAINTIFF’S BREACH OF CONTRACT CLAIMS

Plaintiff next argues that Wayne County breached two separate agreements with plaintiff by contracting to sell sewage capacity to the Airport Authority.¹ One contract governs use of the Rouge Valley sewage disposal system and the other governs use of the Downriver sewage disposal system. Both contracts contain the following language: “It is understood and agreed by the parties hereto that the [Rouge Valley / Downriver] system is to serve the municipalities and not the individual property owners and users thereof, unless by special agreement between the board and the municipality in which the property is located.” Plaintiff argues that because the Airport Authority is a property owner and user, Wayne County is expressly forbidden from selling capacity in either system to the Airport Authority.

Even assuming that plaintiff’s argument regarding breach of contract has merit with respect to the Rouge Valley system, we agree with the trial court that plaintiff’s breach of contract claim must be dismissed because under the circumstances of this case, plaintiff would not incur any damages until after the expiration of its contract with Wayne County. “The party asserting a breach of contract has the burden of proving its damages with reasonable certainty, and may recover only those damages that are the direct, natural, and proximate result of the breach.” *Alan Custom Homes, Inc v Krol*, 256 Mich App 505, 512; 667 NW2d 379 (2003).

According to plaintiff’s complaint, damages for the breach of contract “will result in lost revenue to [plaintiff],” when the “sewage and/or glycol containing water” is diverted to Wayne County’s system pursuant to the contract between Wayne County and the Airport Authority. Thus, it is clear from the complaint that as of the time of its filing, plaintiff had not incurred any damages and only anticipated damages once a connection occurred and the flow was diverted to the system that was still under construction. But plaintiff did not allege, and at the hearing on the

¹ We note that plaintiff does not argue on appeal that the Airport Authority breached any agreement.

motion it was not disputed, that the connection being built by the Airport Authority in order to utilize the Rouge Valley System would not be completed until after the contract between plaintiff and Wayne County governing that system expired. The contract did not prohibit entering into any agreement for use of the system after the expiration of the contract. Thus, because no use of the Rouge Valley System in connection with the 2009 agreement between the Airport Authority and Wayne County was contemplated until after the expiration of the contract between Wayne County and plaintiff, there could be no damages caused by a breach of the Rouge Valley contract between Wayne County and plaintiff. Under these circumstances, we conclude that the trial court did not err when it ruled that plaintiff's breach of contract claim must be dismissed because plaintiff cannot recover for any breach of contract due to its inability to show that it will sustain damages before the expiration of the contract between it and Wayne County.

Plaintiff also claims that Wayne County breached the Downriver agreement. The 2009 agreement between defendants does not contemplate use of the Downriver sewage disposal system, and accordingly, does not impact the Downriver agreement between plaintiff and Wayne County. Accordingly, Wayne County's 2009 agreement with the Airport Authority does not constitute a breach of its agreement with plaintiff.²

Affirmed.

/s/ William B. Murphy
/s/ Joel P. Hoekstra
/s/ Christopher M. Murray

² Plaintiff has abandoned its objections to the trial court's denial of its motion for preliminary injunction by failing to make any argument in its brief, despite presenting the question for review. *Ypsilanti Twp v Kircher*, 281 Mich App 251, 287; 761 NW2d 761 (2008); MCR 7.212(C)(7).